

Judge : HON. KAREN A. OVERSTREET
Chapter: Chapter 7

**UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON**

TONKKA TRUCKING AND
EXCAVATING, LLC.,

Debtor.

Bankruptcy No. 10-10222

PETER ARKISON, TRUSTEE, solely in his
capacity as Chapter 7 Trustee of the estate of
Tonkka Trucking and Excavating, LLC.,

Plaintiff,

v.

KORNERSTONE ENTERPRISES

and

HERB YOUNG and JANE DOE YOUNG,
husband and wife and the marital community
composed thereof,

Defendants.

Adversary No. 12-1040

FIRST AMENDED COMPLAINT TO
AVOID AND RECOVER FRAUDULENT
TRANSFERS AND PREFERENTIAL
TRANSFERS

I. INTRODUCTION

PETER ARKISON, solely in his capacity as Chapter 7 Trustee of the bankruptcy estate of Tonkka Trucking & Excavating, LLC., by and through his undersigned counsel, complains as set forth below.

II. JURISDICTION AND VENUE

2.1 This is an action to recover estate property by avoiding preferential and/or fraudulent transfers, and thus is a "core proceeding" pursuant to 28 U.S.C. §157(b)(2) (F), (H), and (O).

2.2 This Court has jurisdiction to hear this complaint pursuant to 28 U.S.C. §157(a) and (b), 1334(a) and (b), and 11 U.S.C. §§105, 510, 544, 547, 548, and 550.

2.3 This matter has been referred to the Bankruptcy Judges of the District pursuant to General Rule 7 of the Rules for the United States District Court for the Western District of Washington.

2.4 Venue is proper under 28 U.S.C. §1409.

III. PARTIES

3.1 Debtor. Tonkka Trucking and Excavating, LLC., (“Debtor” or “Tonkka”) filed a voluntary chapter 7 bankruptcy petition on January 12, 2010 (“Petition Date”).

3.2 Trustee. Peter Arkison (“Arkison” or “Trustee”) was appointed as the Chapter 7 Trustee for the Tonkka estate on or about January 12, 2010. The Trustee is authorized to bring this action pursuant to §§544, 547, 548, and 550 of the Bankruptcy Code and does so solely in his capacity as Trustee for the Tonkka estate.

3.3 Defendants. Kornerstone Enterprises is a sole proprietorship of Herb and Jane Doe Young. Herb and Jane Doe Young are husband and wife and constitute a marital community and any act done by one was done for the benefit of the community.

IV. STATEMENT OF FACTS

4.1 Upon information and belief the trustee alleges that the Debtor did not have any business relationship with the Defendants and at no time relevant herein did the Debtor owe any funds to the Defendants.

4.2. The debtor made the following transfers to the Defendants:

2/16/06	ck 3942	Kornerstone	\$1,125.00
2/21/06	ck 3960	Kornerstone	\$1,200.00
4/5/06	ck 4013	Kornerstone	\$1,125.00
4/12/06	ck 4024	Kornerstone	\$1,125.00
4/17/06	ck 4041	Kornerstone	\$1,125.00
4/24/06	ck 4046	Kornerstone	\$1,125.00

1	5/2/06	ck 4050	Kornerstone	\$1,125.00
2	5/15/06	ck 4074	Kornerstone	\$1,125.00
3	5/22/06	ck 4079	Kornerstone	\$1,125.00
4	6/2/06	ck 4086	Kornerstone	\$1,125.00
5	6/5/06	ck4089	Kornerstone	\$1,125.00
6	6/13/06	ck 4092	Kornerstone	\$1,125.00
7	6/19/06	ck 4096	Kornerstone	\$1,125.00
8	6/27/06	ck 4105	Kornerstone	\$1,125.00
9	7/12/06	ck 4111	Kornerstone	\$1,125.00
10	7/18/06	cl 4118	Kornerstone	\$1,125.00
11	7/25/06	ck 4128	Kornerstone	\$1,200.00
12	7/31/06	ck 4135	Kornerstone	\$1,200.00
13	7/31/06	ck 4136	Kornerstone	\$1,200.00
14	8/7/06	ck 4140	Kornerstone	\$1,200.00
15	8/14/06	ck 4147	Kornerstone	\$1,200.00
16	8/14/06	ck 4148	Kornerstone	\$1,200.00
17	8/23/06	ck 4155	Kornerstone	\$1,200.00
18	9/5/06	ck 4166	Kornerstone	\$2,400.00
19	12/8/06	cc	Kornerstone	\$1,200.00
20	4/1/07	CC	Kornerstone	\$1,150.00
21	1/15/2008	ckl 4607	Kornerstone	1,200.00
22	1/28/2008	ck 4628	Kornerstone	700.00
23	2/4/2008	ck 4642	kornerstone	1,200.00
24	2/12/2008	ck 4648	Kornerstone	1,200.00
25	2/19/2008	ck 4666	Kornerstone	1,200.00
26	2/22/2008	ck 4673	Kornerstone	1,200.00
27	3/3/08	ck 4683	Kornerstone	\$1,200.00
28	3/10/08	ck 4691	Kornerstone	\$1,200.00
29	3/19/08	ck 4702	kornerstone	\$1,200.00
	3/24/08	ck 4709	Kornerstone	\$1,200.00
	3/31/08	ck 4729	Kornerstone	\$1,200.00
	4/7/08	ck 4739	Kornerstone	\$1,200.00
	4/14/08	ck 4734	Kornerstone	\$1,200.00
	4/21/08	ck 4756	Kornerstone	\$1,200.00
	5/5/08	ck 4773	Kornerstone	\$1,250.00
	5/14/08	ck 4787	Kornerstone	\$1,250.00
	5/19/08	ck 4804	Kornerstone	\$1,250.00
	5/27/08	ck 4811	Kornerstone	\$1,250.00
	5/30/08	ck 4830	Kornerstone	\$1,250.00

1	6/10/08	ck 4836	Kornerstone	\$1,250.00
2	6/13/08	ck 4846	kornerstone	\$1,250.00
3	6/23/08	ck 4859	Kornerstone	\$1,250.00
4	6/27/08	ck 4874	Kornerstone	\$1,250.00
5	7/6/08	ck 4108	Kornerstone	\$1,125.00
6	7/8/08	ck 4882	Kornerstone	\$1,250.00
7	7/11/08	ck 4888	Kornerstone	\$1,250.00
8	7/18/08	ck 4899	Kornerstone	\$1,250.00
9	7/28/08	ck 4906	kornerstone	\$1,250.00
10	8/4/08	ck 4914	Kornerstone	\$1,250.00
11	8/11/08	ck 4922	Kornerstone	\$1,250.00
12	8/18/08	ck 4940	Kornerstone	\$1,250.00
13	8/22/08	ck 4952	Kornerstone	\$1,250.00
14	1/5/09	Check #5125	Kornerstone	\$1,250.00
15	1/12/09	Check #5133	Kornerstone	\$1,250.00
16	1/20/09	Check #5134	Kornerstone	\$1,050.00
17	1/22/09	Check #5144	Kornerstone	\$1,250.00
18	2/2/09	Check #5154	Kornerstone	\$1,250.00
19	2/9/09	Check #5164	Kornerstone	\$1,250.00
20	2/17/09	Check #5181	Kornerstone	\$1,250.00
21	2/23/09	Check #5187	Kornerstone	\$1,250.00
22	3/2/09	check #5192	Kornerstone	\$1,250.00
23	3/9/09	Check #5196	Kornerstone	\$1,250.00
24	3/17/09	Check #5205	Kornerstone	\$1,250.00
25	3/24/09	Check #5218	Kornerstone	\$1,250.00
26	4/6/09	Check #5237	Kornerstone	\$1,250.00
27	4/13/09	Check #5248	Kornerstone	\$1,250.00
28	4/17/09	Check #5251	Kornerstone	\$1,250.00
29	4/24/09	Check #5268	Kornerstone	\$1,250.00
	5/13/09	Check #5275	Kornerstone	\$1,250.00
	5/21/09	Check #5300	Kornerstone	\$1,650.00
	6/15/09	Check #5333	Kornerstone	\$625.00
	6/29/09	Check #5351	Kornerstone	\$620.00
	4/28/20087	ck 4764	Kornerstone	\$1,200.00

Total

\$46,367.96

4.3 Upon information and belief there were other transfers made by the Debtor to the Defendants.

1 **V. FIRST CAUSE OF ACTION -- FRAUDULENT TRANSFERS**
2 **§548 OF THE CODE AS TO DEFENDANTS**

3 5.1 Paragraphs I through IV and all subsections thereof are hereby repeated
4 and incorporated as though set forth herein.

5 5.2 Within two years of filing the bankruptcy petition herein, and while the
6 Debtor was insolvent, the Debtor made those transfers set forth in paragraph IV above to or
7 for the benefit of the Defendants.

8 5.3 The Debtor did not receive reasonably equivalent value for the transfers set
9 forth in paragraph IV above which were made to or for the benefit of the Defendants.
10

11 5.4 The Debtor was insolvent on the date of the transfers referenced in
12 paragraph IV above. Alternatively, the Debtor became insolvent as a result of such
13 transfers to the Defendants.

14 5.5 The Debtor made the transfers referred to in paragraph IV above to the
15 Defendants with actual intent to hinder, delay and defraud creditors to whom the Debtor
16 was indebted on or after the date of the transfers.

17 5.6 The transfers to the Defendants set forth in paragraph IV are avoidable
18 pursuant to 11 U.S.C. §548 as stated therein as they were either a) made with actual intent
19 to hinder, delay or defraud creditors to whom the Debtor was indebted on or after the date
20 of the transfers; or b) the Debtor received less than reasonably equivalent value in
21 exchange for the transfers, became insolvent or was insolvent at the time of the transfers,
22 leaving the Debtor with an unreasonably low capital account or leaving the Debtor unable
23 to pay its debts as they matured.
24

25 5.7 The transfers made to the Defendants as set forth in paragraph IV above are
26 avoidable by the Trustee under 11 U.S.C. §548(a)(1) and/or (a)(2).
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28 **VI. SECOND CAUSE OF ACTION-- FRAUDULENT CONVEYANCES**
29 **11 U.S.C. § 544 AND RCW 19.40. TO DEFENDANTS**

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1 6.1 Paragraphs I through V and all subsections thereof are hereby repeated
2 and incorporated as though fully set forth herein.

3 6.2 The Debtor made the transfers set forth in paragraph IV above which are
4 avoidable pursuant to RCW 19.40.010 et. seq. as stated therein.

5 6.3 The transfers by the Debtor to Defendants as set forth in paragraph IV
6 above were made with actual intent to hinder, delay or defraud creditors of the Debtor.

7 6.4 The transfers by the Debtor to Defendants as set forth in paragraph IV were
8 made without the Debtor receiving reasonably equivalent value in exchange for the
9 transfers.
10

11 6.5 The transfers by the Debtor to the Defendants as set forth in paragraph IV
12 above caused the Debtor to engage or thereafter engage in business for which the
13 remaining assets of the Debtor were unreasonably small in relation to the business or
14 transactions.
15

16 6.6 The transfers by the Debtor to the Defendants should have caused the
17 Debtor to believe that it would incur debts beyond its ability to pay as they became due.

18 6.7 The transfers by the Debtor to the Defendants as set forth in paragraph IV
19 above were not made in exchange for reasonably equivalent value.

20 6.8 The Debtor was insolvent on the date of each and every transfer set forth in
21 paragraph IV above. Alternatively, the Debtor became insolvent as a result of the
22 transfers.
23

24 **VII. THIRD CAUSE OF ACTION PREFERENTIAL TRANSFERS**
25 **§547 OF THE CODE AS TO DEFENDANTS**

26 7.1 Paragraphs I-VI, and all subsections thereof, are hereby repeated and
27 incorporated as though fully set forth herein.
28

1 7.2 The payments by the Debtor to the Defendants constitute transfers by the
2 Debtor of an interest in property.

3 7.3 The transfers from the Debtor to the Defendants were made for or on
4 account of an antecedent debt owed by the Debtor to the Defendants.

5 7.4 The transfers referred to in Paragraph IV, above, were made by the Debtor
6 to the Defendants within 90 days of the Petition Date.

7 7.5 At the time of the transfers referred to in Paragraph IV, above, the Debtor
8 was insolvent.

9 7.6 The transfers referred to in Paragraph IV, above, enabled the Defendants
10 to receive more than it would have received if the case were a case under Chapter 7 of Title
11 11 of the United States Code, the transfers had not been made, and the Defendants
12 received payment of its debts to the extent provided by the provisions of Title 11 of the
13 United States Code.
14

15 **VIII. FOURTH CAUSE OF ACTION: PRESERVATION**
16 **OF AVOIDED TRANSFERS**

17 8.1 Paragraphs I through VI above and all subsections thereof are hereby
18 repeated and incorporated as though fully set forth herein.

19 8.2 Any and all transfers avoided under the claims for relief set forth in
20 Paragraphs I-VI, above, are preserved for the benefit of the estate pursuant to 11 U.S.C. §§
21 550 and 551.
22

23 **IX. PRAYER FOR RELIEF**

24 9.1 The Trustee asks for the following relief:

25 9.2 That the Court determine the transfers by the Debtor to the Defendants as
26 set forth in Paragraph IV, above, constitute fraudulent transfers which are avoidable
27 pursuant to 11 U.S.C. §§544, 548 and 550 and/or RCW 19.40 et. al.
28

1 9.3 That the Court determine the transfers by the Debtor to the Defendants as
2 set forth in Paragraph IV, above, constitute preferential transfers which are avoidable
3 pursuant to 11 U.S.C. §§544, 547 and 550 of the Bankruptcy Code

4 9.4 That the Court enter an order consistent with this Complaint and a judgment
5 in an amount to be determined against the Defendants in favor of the Chapter 7 Trustee,
6 Peter Arkison, plus interest from the date of the transfers, and such other relief as this
7 Court deems just and proper.

8 Dated this 11th day of January, 2012.

9
10 WOOD & JONES, P.S.

11 /s/ Denice E. Moewes

12 Denice E. Moewes, WSB #19464
13 Attorney for Chapter 7 Trustee
14 Peter Arkison
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